No. 736

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JOHN T. FEY, Cl

IN THE SUPREME COURT

of the

UNITED STATES

OCTOBER TERM, 1956

THE CONTINENTAL BANK AND TRUST COMPANY OF SALT LAKE CITY, UTAH,
Petitioner,

vs.

EMERY J. WOODALL,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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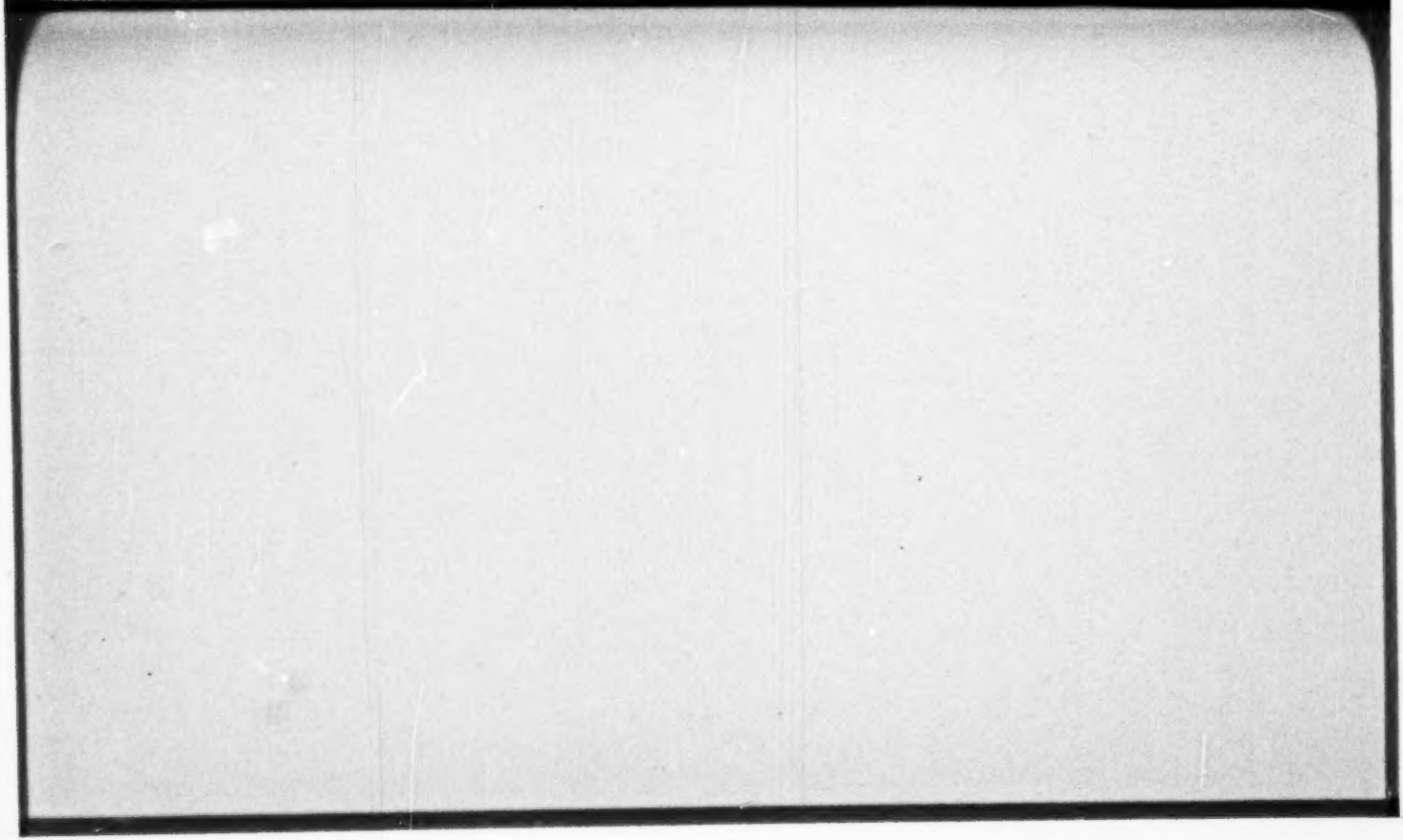

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EMERY J. WOODALL,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue for review of the judgment of the United States Court of Appeals for the Tenth Circuit entered on the 2nd day of January, 1957.

CITATION OF OPINION BELOW

The opinion of the Court of Appeals for the Tenth Circuit is printed in Appendix A hereto at page 17 and is not yet reported in the Federal Reporter System. No opinion was written by the District Court.

JURISDICTION

The Judgment of the Court of Appeals was entered on January 2, 1957. Jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTION PRESENTED

Whether the Board of Governors of the Federal Reserve System has the power under the Federal Reserve Act to require a state member bank after admission to the Federal Reserve System to increase its capital by an amount *determined by the Board* under pain of forfeiture of its membership in the Federal Reserve System.

STATUTE INVOLVED

The statute involved is the Federal Reserve Act as amended (Act of December 23, 1913, Chap. 6, 38 Stat. 251, 12 U.S.C. 221 et seq.). The portions of Sections 9 and 11 (i) of that Act, cited by the Court below, are printed in Appendix B hereto, infra, at page 25.

STATEMENT

This action grows out of an attempt by the Board of Governors of the Federal Reserve System, hereinafter called the Board, to require The Continental Bank and Trust Company, a Utah banking corporation to increase its capital by $1,500,000, (later raised in the Board's statement of particulars to the "approximate range of $2,400,000—$2,900,000"). (DR 11) The Board made its original demand in February, 1956; in May, 1956, the bank's stockholders, by an overwhelming vote, declined so to increase the bank's capital. On June 29, 1956, the Board instituted proceedings for an administrative hearing under Section 9 of the Federal Reserve Act (12 U.S.C. 327) and under the Administrative Procedure Act for the purpose of determining:

"(a) The adequacy or inadequacy of the net capital stock and surplus of The Continental Bank and Trust Company in relation to the character and condition of its assets and to its present and prospective deposit liabilities and its other corporate responsibilities, and

(b) What net additional amount, if any, of the capital funds is needed by The Continental Bank and Trust Company to have an adequate capital structure, and

(c) What is a reasonable period of time to allow The Continental Bank and Trust Company to effect any increase in its capital structure as may be found to be needed to make them adequate before being required by the Board of Governors to forfeit its capital stock in the Federal Reserve Bank of San Francisco and to forfeit all its rights and privileges of membership in the Federal Reserve System for failure to do so."

(Excepts from the Notice of Hearing filed by the Board. DR 6)

Believing that public knowledge of the facts adduced at a public hearing would be less harmful to the Bank than leaks and rumors issuing from a closed hearing, the Bank requested that any hearing by the Board of Governors with respect to imposing sanctions for the Bank's failure to accede to the suggestion and demands of the Board of Governors be made public. Accordingly, the Board made the hearing public. (DR 42)

The hearing was originally set to commence on September 10, 1956, in Salt Lake City, Utah, and was later continued by the Board to October 3, 1956. Pursuant to Section 11 of the Administrative Procedure Act, Emery J. Woodall, respondent herein, was desig-

nated as the trial examiner to conduct the hearing and take the evidence.

The Bank, pursuant to Section 5 of the Administrative Procedure Act, filed with the Board a demand for a more definite statement of legal authority and jurisdiction and matters of fact and law asserted. In response thereto, the Statement of Particulars filed by the Board stated (DR 10) the Board was relying on its Regulation H and particularly Section 7 thereof titled "Conditions of Membership". Section 7 states it is issued "pursuant to the authority contained in the first paragraph of Section 9 of the Federal Reserve Act" (12 U.S.C. 321) and provides in its last paragraph:

> "If at any time, in the light of all the circumstances, the aggregate amount of a member state bank's net capital and surplus funds appear to be inadequate, the bank, within such period as shall be deemed by the Board to be reasonable for this purpose, shall increase the amount thereof to an amount which in the judgment of the Board shall be adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities."

The Bank moved to dismiss the administrative proceeding (DR 18) on the ground that the Federal Reserve Act did not grant the power to the Board of Governors to inquire into the capital adequacy or inadequacy of a state member bank or to require such bank to acquire such additional capital as the Board may determine within a time specified by the Board of Governors, or to forfeit its membership in the Federal Reserve System, and further, even if the

Board's Regulation H so provided, it was an unlawful usurpation of power not delegated to the Board by the Congress. It was Petitioner's position in making such motion and it is Petitioner's contention here that the Federal Reserve Act does not authorize the above quoted paragraph in Regulation H.

On September 29, 1956, the Board denied the Bank's motion to dismiss on the ground "the proceedings herein instituted are authorized under the Act and the regulations issued pursuant thereto." (DR 27) The Order recited as its legal authority a portion of the Preamble to the Federal Reserve Act, Paragraphs 1, 6, 9, and 11 of Section 9 (12 U.S.C. 321, 324, 327, 329) and sub-paragraph i of Section 11 (12 U.S.C. 248 (i)) of the Federal Reserve Act.

On October 2, 1956, the Bank filed this action in the United States District Court for the District of Utah to enjoin Emery J. Woodall, the hearing examiner appointed by the Board, from conducting the hearing on the ground that such proceeding was not authorized by law and was beyond the jurisdiction of the Board, and that such hearing would irreparably injure the bank and tend to undermine the confidence of its customers and depositors and endanger its ability to perform its normal banking operations. (DR 1)

Upon the pleadings and affidavits, the trial judge found that such a hearing should not be held to the irreparable injury to the Bank, unless the Board possessed the power to conduct a hearing to inquire into the capital adequacy or inadequacy of a state member

bank and the court issued its temporary restraining order against the defendant Woodall, restraining him from proceeding further with the hearing. (DR 32)

The complaint, summons and temporary restraining order were served on the defendant Woodall in Salt Lake City, Utah, on October 2, 1956, and on the same day his counsel (also the Board's counsel) requested the Court for an immediate hearing on the preliminary injunction and on his motion to dissolve the temporary restraining order, to dismiss the preliminary injunction and to dismiss the complaint. (DR 34) These motions were heard the next day.

At the close of oral argument, the District Court concluded that the Board was acting within its jurisdiction and power and dismissed the action. (DR 51) Plaintiff's counsel indicated that an appeal was intended, as this is a case of first instance, (DR 52) and the Court amended its ruling so as to hold both the Board of Governors and "perhaps the United States" were necessary parties and that the court had no jurisdiction to hear the matter under the decision in *Larson* v. *Domestic and Foreign Commerce Corp.*, 337 U.S. 682 and *Oyler* v. *McKay* (10th Cir. 1955), 227 F2d 604. (DR 53)

The Bank filed notice of appeal to the Court of Appeals for the Tenth Circuit on the next day (DR 44) and a stay of the administrative proceeding, pending appeal, was granted by one of the circuit judges on October 8, 1956. (AR 1) This stay order was subsequently continued by the Court of Appeals until the Appeal could be heard and decided. (AR 3)

On January 2, 1957, the Court of Appeals for the Tenth Circuit entered its opinion (AR 5) affirming the District Court's finding that the Board of Governors was "clothed with power to order the hearing" and that, therefore, the Board of Governors was an indispensable party to the action to restrain the conducting of such hearing. It is to review that judgment that this Petition is filed.

On January 4, 1957, the Court of Appeals entered its order (AR 16) further staying the administrative hearing until February 4, 1957, to allow Petitioner opportunity to file this Petition for Certiorari. Petitioner has been advised by the Board's counsel that the administrative proceedings will not continue until this Court disposes of this case.

(References to the record in the District Court are shown as (DR). References to the record in the Court of Appeals are shown as (AR).

REASONS FOR GRANTING THE WRIT

I. The fundamental issue in this case involves an important interpretation of the Federal Reserve Act, i.e., whether the Federal Reserve Act authorizes the Board to require a state chartered bank, as a condition of continued membership in the Federal Reserve System, to increase its capital whenever the Board finds such capital to be inadequate. An analogous issue as to the validity of a single condition of membership imposed on a state bank by the Board persuaded this Court to grant certiorori in *Eccles* v. *People's Bank*, 322 U.S. 755, 92 L ed. 342. In that case, on the hearing on the merits, (333 U.S. 426, 92

L ed. 784) this Court found the issue not yet ripe for judicial determination and, without passing on the issue as to the power of the Board, reversed the lower court on the ground that the Board had not yet sought to enforce the objectionable condition. In this case, there is no ripeness-for-review question. Here the Board has actually commenced proceedings to enforce a condition of membership which Petitioner asserts is not authorized by law, and has made a final administrative decision as to its power to do so.

This case is of greater importance than the People's Bank litigation because this case involves a regulation of general application and not merely a condition applicable to one bank alone as in the People's Bank case. In the People's Bank case the petition for certiorari filed by the Board stated, "This case presents for the first time in the courts an important question concerning the statutory authority of the Board to condition the admission of banks to system membership". That statement as to the primal nature of the issue still holds. The validity of the regulation imposing such conditions has never been passed upon by any court save in the lower courts here. The important question in the interpretation of the Federal Reserve Act concerning the power of the Board to impose conditions of membership is still undecided. It should be settled by this Court.

II. While the instant case involves the attempt of the Board to require the petitioner bank to increase its capital, the issue is one of paramount interest not only to the Board in the exercise of its supervisory

powers, but to the 1832[1] banks in the United States which are state chartered member banks of the Federal Reserve System. The question is not of mere academic interest to those banks. The Board of Governors' regulation H states that a member bank's capital shall be "adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities". No definition is given in this regulation as to the meaning of the term "adequate" nor how the character and condition of a bank's assets and the relation of capital to its deposits and other liabilities are to be considered. That application is left by Regulation H to banking and finance economists and other specialists, and to the broad discretion of the Board of Governors of the Federal Reserve System acting without any standards of reference.

The "traditional" rule of thumb used by banking theorists for generations in considering the adequacy of a bank's capital has been that the ratio of capital to deposits should not be less than $1 of capital for each $10 of deposits.[2] As of June 30, 1956, the arithmetical average ratio of all operating insured commercial banks was $1 of capital to every $11.9 of deposits.[3] If this traditional approach were used, most banks[4] would have "inadequate" capital and be vitally concerned with this question of the Board of Governors'

1. Federal Reserve Bulletin, October, 1956, p. 1087.
2. Madden, Nadler & Heller, *Money Market Primer*, pp. 111-112.
3. Federal Reserve Bulletin, op cit.
4. According to Business Week for January 19, 1957, the ratio of capital funds to deposits of the five largest banks in the United States were: Bank of America, 1-16; Chase Manhattan, 1-12; First National City, 1-12; Manufacturer's Trust, 1-14; and Chemical Corn Exchange, 1-12.

power under Section 9 of the Federal Reserve Act to compel capital increase or forfeit their membership.

The Federal Deposit Insurance Corporation has adopted as a test of capital adequacy[5] the ratio of capital funds to total assets and uses the national average of such ratios as the minimum standard. It hardly need be pointed out that when a national average is the standard, a substantial number of the banks used in computing the average are going to be below the standard. According to the FDIC annual report for 1954, there were, as of June 30, 1954, 489 insured commercial banks with a ratio of capital to total assets within the range of 4% to 4.9%, within which category appellant bank falls. If the Board in this case adopted this test, some 488 other banks are equally vitally concerned with the question of the power of the Board to require capital increases, assuming such 488 banks to be members of the Federal Reserve System.

The Board of Governors in its informal pronouncements on the subject[6] has indicated it considers the FDIC ratio and the ratio of capital to risk assets as rule of thumb tests for capital adequacy. But economists do not agree on a definition of "risk assets" in determining such ratios. The most conservative definition is that risk assets are all the assets of a bank less cash and United States government securities. Applying this definition, as of June 30, 1956, the risk asset ratio of all Federal Reserve System

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5. Freeman: "The Problems of Adequate Bank Capital", Chicago, 1952.

6. Freeman, op cit.

member banks was approximately 1 to 7.[7] Of the 6500 member banks, (both state and national) a substantial number of banks will be below this average. The number of banks above the 1 to 7 ratio will tend to increase and the average ratio will tend to rise under the present "tight money" policy of the Board of Governors of the Federal Reserve System which has forced banks to increase their loan portfolios in relation to investments in government securities in order to serve their community needs. As recently as 1953, the comptroller of the Currency, who supervises national banks, used the risk asset ratio of one to six as a screen to test capital adequacy.[8] Yet, as we have pointed out, only three years later, the national average is already one to seven.

Thus, the issue of capital adequacy and the power of the Board of Governors to take action with respect thereto is very real not only to petitioner here, but to many hundreds of banks throughout the country, if not the entire banking industry. The Board of Governors asserts that the Federal Reserve Act empowers it to use its own discretion as to how much is adequate with only the most general criteria of character and condition of assets and deposit liabilities and other corporate responsibilities to be considered. The petitioner believes that the Federal Reserve Act gives to the Board no such power over a bank's capital after admission, and that the Board's imposition of conditions of membership must be, as

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7. Federal Reserve Bulletin, October, 1956.

8. Missouri Banker's Assn., "Bank Capital Structures & Ratios", July, 1953.

the statute provides, only those "pursuant" to the Federal Reserve Act. (12 U.S.C. 321)

III. Petitioner believes the decision of the Court below resulted from a misunderstanding of the basic issue, with a consequent error in its determination. The Federal Reserve Act makes no grant of authority to the Board to inquire into capital adequacy of a state bank once it is a member of the Federal Reserve System. Respondent has recognized this fact and has argued below that such power must be implied from the preamble to the Federal Reserve Act and the general grant of power in other sections of the act so as to broaden the power specifically limited in Section 9 of the Federal Reserve Act. Petitioner in its brief to the Court of Appeals presented in detail the statutory history of the amendments to Section 9, which clearly indicates there was "no intent of Congress . . . to create in the Federal Reserve Board a body to prescribe any kind of conditions it pleased as conditions precedent to admissibility to the Federal Reserve System . . ." *People's Bank of Lakewood Village* v. *Eccles*, 161 F2d 636 (D.C. Cir. 1947).

The Court below, apparently without analysis of the various sections of the Federal Reserve Act and its history, failed to differentiate between "impairment of capital" and "capital inadequacy" and thus, resolved the issues as to the Board's power in the Board's favor. The Court of Appeals' reasoning is summed up as follows in its opinion:

> ". . . it is the continuing duty and function of the Board to see that such bank either comply with the capital and reserve requirements of

the Act and does not suffer *impairment* of its capital structure or surrenders its stock in the Federal Reserve Bank and cease to be a member of the Federal Reserve System. The object and purpose of the scheduled hearing now under consideration was to inquire into the condition of the Bank in respect to whether it had *suffered inadequacy* of capital structure, if so what corrective procedure should be invoked, and whether the Bank should be required to surrender its stock in the Federal Reserve Bank and cease to be a member of the Federal Reserve System. And we entertain no doubt that under the provisions of the section of the Act, the Board had power to conduct the hearing for such purposes." (AR 11) (emphasis supplied)

The capital requirements set forth in the Federal Reserve Act do not refer to "adequacy". The Act, at the time Petitioner was admitted to membership, required only that a state bank have a certain amount of capital based on the population of its place of business. The requirement that a member bank not reduce its capital was added in 1952.[9] The Board has not contended either that Petitioner bank did not have the capital required for admission or that it has reduced its capital since admission. In fact, the bank's capital has increased from $2,392,651.29 when it was admitted in January, 1952, to $3,209,057.22 on December 31, 1956. Nor has the bank's capital become impaired. Its capital account on June 30, 1956, when the Board of Governors instituted the administrative proceeding, asserting capital inadequacy, was as follows:

9. 12 U.S.C. 329, as amended by Act of July 15, 1952, Ch. 753, Sec. 1, 66 Stat. 633.

Capital	$1,800,000
Surplus	1,010,000
Undivided profits	215,110.24
	$3,025,110.24

On December 31, 1956, that capital account, as reported to the Federal Reserve Bank of San Francisco was:

Capital	$1,800,000
Surplus	1,060,000
Undivided profits	349,057.22
	$3,209,057.22

In addition to increasing its capital account by $173,946.98 in six months, the Bank paid to its stockholders during the year 1956, dividends in the sum of $198,000.00.

In short, the Court of Appeals' reasoned that since the Board, it said, has the power to correct capital impairment, it has the power to determine whether the bank "had *suffered* inadequacy". The use of "suffer" indicates the misconception that "impairment" and "inadequacy" may be equated. "Impairment" would mean that the bank's assets had, *in fact*, so declined in value that the excess of its assets over its liabilities would be less than $1,800,000 and that the surplus and undivided profits had been wiped out. Thus, "to suffer" used in the sense "to endure" or "to undergo" would be appropriate in connection with "impairment". On the other hand, "adequacy or inadequacy" is a relative concept of judgment indicating whether the total capital account available constitutes a sufficient cushion to meet deposit and other liabilities in the suppositious event of a decline in value

of the bank's assets. This judgment, of course, requires a reliable crystal ball to predict the future character of both a bank's assets and its liabilities. Thus, the words "had suffered" in the sense of "endured or undergone" would have no meaning at all when predicting the future.

We believe that the Congress did not intend to grant the Board the power so to predict the future and that such an implied power cannot and need not be found here, least of all on the basis of the faulty syllogism employed by the Court of Appeals.

We believe this Court should pronounce the final word on this important question in the Federal Banking System in light of a careful analysis of the provisions of the Federal Reserve Act and the economic factors involved in its administration. This the Court of Appeals did not do.

Respondent in the courts below raised issues as to the joinder of the Board as an indispensable party and the exhaustion of administrative remedies. As to the latter issue, the Court of Appeals, apparently adopting Petitioner's view that the test of reviewability imposed by the Administrative Procedure Act and by this court in *Eccles* v. *People's Bank*, supra, went to the heart of the controversy. As to the indispensable party issue, this Petitioner contended below that the decisions of this court in *Williams* v. *Fanning*, 332 U.S. 490, *Hynes* v. *Grimes Packing Company*, 337 U.S. 86, and *Shaughnessy* v. *Pedreiro*, 349 U.S. 48, were dispositive of the issue. In any event, the

reasoning of the Court below in applying *Larson* v. *Domestic and Foreign Commerce Corporation*, 337 U.S. 682, made the determination of the issue as to the power of the Board, and hence whether respondent was acting ultra vires, esential. Its wisdom on this issue will necessarily stand or fall depending on this court's decision on the fundamental issue in this case, i.e., whether the Board has the statutory authority to require petitioner to increase its capital.

CONCLUSION

This case presents in a posture ripe for determination, an important issue involving the construction of the banking laws of the United States which has never been passed upon by this Court and which has been decided erroneously by the Court of Appeals. Unless this Court reviews and determines the issue here, there is no possibility of curbing the assumption of power by the Board far beyond that granted by the provisions of the Federal Reserve Act.

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

November Term - 1956

THE CONTINENTAL BANK AND TRUST COMPANY, of Salt Lake City, Utah,
Appellant,
vs.
EMERY J. WOODALL,
Appellee.
Number 5498

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH

Peter W. Billings (Albert J. Colton and Fabian, Clendenin, Moffat & Mabey were with him on the briefs) for Appellant.
Bolling R. Powell, Jr., for Appellee.

Before BRATTON, Chief Judge, and HUXMAN and PICKETT, Circuit Judges.

BRATTON, Chief Judge:

This case presents for determination questions of law arising out of the attempt of the Board of Governors of the Federal Reserve System, hereinafter referred to as the Board, to conduct a hearing in respect to the capital adequacy or inadequacy of a state bank member of the Federal Reserve System.

Continental Bank and Trust Company, of Salt Lake City, Utah, hereinafter referred to as the Bank, is a state bank member of the Federal Reserve System.

The Board issued an order for a hearing to be held at Salt Lake City for the purpose of determining the adequacy or inadequacy of the net capital stock and surplus of the Bank in relation to the character and condition of its assets and to its then present and prospective deposit liabilities and its other corporate responsibilitiess; determining what additional amount, if any, of capital funds were needed by the Bank to have an adequate capital structure; and determining what was a reasonable period of time to allow the bank within which to effect any increase of capital funds found to be needed to make them adequate before being required to surrender its capital stock in the Federal Reserve Bank of San Francisco and to forfeit its rights and privileges of membership in the Federal Reserve System for failure to do so. The Bank moved the Board to dismiss the proceeding upon the ground that the Board had no authority to inquire into the capital adequacy or inadequacy of a state bank member of the Federal Reserve System, or to require such a bank to acquire additional capital or forfeit its membership in the Federal Reserve System. The motion was denied. The Bank requested that the hearing be public and the Board acquiesced therein. Emery J. Woodall was designated as trial examiner to conduct the hearing and take evidence. Shortly before the hearing was scheduled to begin, the Bank instituted this action against Woodall to enjoin him from conducting the hearing upon the ground that the Board for whom he was acting had no power to conduct a hearing for such purposes. A temporary restraining order was issued. Later the restraining order was

vacated and the action was dismissed. The Bank appealed.

The focus of the attack upon the judgment dismissing the action is that the Board has no power to inquire into the capital adequacy or inadequacy of a state bank member of the Federal Reserve System; that the conducting of the hearing in question would result in irreparable injury to the Bank; and that therefore the court should have enjoined the holding of the hearing. The court predicated in part its dismissal of the action upon the view that the Board was an indispensable party. It is the well established rule of law that where a federal official attempts to perform an act which is in excess of his authority or under authority not validly conferred, an equitable action will lie to restrain him without the sovereign being a party; but where he acts within the range of his authority in the exercise of a function legally delegated to him, an action to restrain him cannot be maintained without the sovereign being impleaded even though there is an assertion of error in the exercise of such power or an abuse of discretion. Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682; State of New Mexico v. Backer, 199 F. (2d) 426; Oyler v. McKay, 227 F.(2d) 604; Ogden River Water Users' Association v. Weber Basin Water Conservancy, CA-10, ...F.(2d).....

The action was not one to restrain the trial exainer on the ground that he was acting beyond the range of the order of the Board. The essence of the cause of action pleaded in the complaint was to restrain the trial examiner on the ground that the Board

had no power to order the hearing. Section 9 of the Federal Reserve Act, as amended, makes provision for banks incorporated under state law to become members of the Federal Reserve System. It provides that a state bank desiring to become such member may make application to the Board, under such rules and regulations as the Board may prescribe, for the right to subscribe to the stock of the Federal Reserve Bank organized within the district in which the applying ban kis located; and that the Board, subject to the provisions of the Act and to such conditions as the Board may prescribe pursuant to the Act, may permit the applying bank to become a stockholder in such Federal Reserve Bank. 12 U.S.C.A. §321. The section further provides that in acting upon the application of an applying state bank, the Board shall consider the financial condition of such bank, the general character of its management, and whether or not the corporate powers exercised are consistent with the purpose of the Act. 12 U.S.C.A. §322. The section further provides that whenever the Board shall permit an applying bank to become a stockholder in the Federal reserve Bank of the district, its stock subscription shall be payable on call of the Board, and stock issued to it shall be held subject to the provisions of the Act. 12 U.S.C.A. §323. The section further provides that all banks admitted to membership in the Federal Reserve System under the provisions of the section shall be required to comply with the capital and reserve requirements of the Act and to conform to those provisions of law imposed upon national banks which prohibit such banks from lending on or purchasing

their own stock, which relate to the withdrawal or impairment of capital, and which relate to the payment of unearned dividends. 12 U.S.C.A. §324. The section further provides that as a condition to membership in the Federal Reserve System, such state banks shall be subject to examinations made by direction of the Board or of the Federal Reserve Bank by examiners selected and approved by the Board. 12 U.S.C.A. §325. And the section further provides that if at any time it shall appear to the Board that a state bank member has failed to comply with the provisions of the Act, or the regulations of the Board made pursuant thereto, it shall be within the power of the Board after hearing to require such bank to surrender its stock in the Federal Reserve System and to forfeit all rights and privileges of membership. 12 U.S.C.A. §327. Under the clear commands of the statute, after a state ban khas been admitted to membership in the Federal Reserve System it must meet certain requirements. One of such requirements is compliance with the capital and reserve exactions of the Act. Another is compliance with the restrictions and inhibitions of the Act against the impairment of the capital of the bank. And where a state bank member fails to comply with the requirements of the Act in respect to its capital and reserve, or fails to comply with the restrictions or inhibitions against the impairment of its capital, the Board is expressly vested with power after hearing to require such bank to surrender its stock in the Federal Reserve Bank and to forfeit all rights and privileges of membership in the Federal Reserve System. In respect to a state bank meeting these require-

ments of the Act, the duties and functions of the Board are not merely coterminus with the making of the application for membership and the admission of the applying bank into membership of the Federal Reserve System. Instead, it is the continuing duty and function of the Board to see that such bank either comply with the capital and reserve requirements of the Act and does not suffer impairment of its capital structure or surrenders its stock in the Federal Reserve Bank and cease to be a member of the Federal Reserve System. The object and purpose of the scheduled hearing now under consideration was to inquire into the condition of the Bank in respect to whether it had suffered inadequacy of capital structure, if so what corrective procedure should be invoked, and whether the Bank should be required to surrender its stock in the Federal Reserve Bank and cease to be a member of the Federal Reserve System. And we entertain no doubt that under the provisions of the section of the Act, the Board had power to conduct the hearing for such purposes.

Section 9 of the Act does not stand alone in point of present pertinence. By section 11(i), as amended, the Board is required to perform the duties, functions, and services specified in the Act, and it is authorized to make rules and regulations necessary to enable it effectively to perform the same. 12 U.S.C.A. §248(i). The provision amounts to a general grant of power to make rules and regulations in harmony with the objects and purposes of the Act and reasonably adapted to the effective discharge of the duties and functions of the Board under the Act. The Board promulgated and for many years has maintained Regulation

H relating to conditions of membership of state banking institutions in the Federal Reserve System. The regulation provides among other things that such banks shall at all times conduct their business and exercise their powers with due regard to the safety of their depositors; and that the net capital and surplus of such banks shall be adequate in relation to the character and condition of their assets and to their deposit liabilities and other corporate responsibilities. The regulation is in harmony with the objectives and purposes of the Act. It is reasonably adapted to further the discharge of the duties and functions of the Board under the Act. And its promulgation and maintenance constitute permitted administrative action under the Act. The scheduled hearing was intended and designed to ascertain whether the Bank had failed and was continuing to fail to meet the requirements of the Act and the regulation, if so what should be done to bring its condition into compliance with the Act and the regulation in respect to capital adequacy, and in the event of continued failure to meet the requirements of the Act and the regulation whether the Bank should cease to be a member of the Federal Reserve System. That being its purpose, the hearing was within the purview of the Act and the regulation, considered in their entirety.

The Board was clothed with power to order the hearing. The authority to conduct the hearing and take the evidence was regularly delegated to the trial examiner, and the examiner was acting well within the range of authority delegated to him. In such circumstances, the Board was an indispensable party to

the action to restrain the conducting of the hearing. And the Board not being a party, the court correctly entered its judgment of dismissal. Larson v. Domestic and Foreign Commerce Corp., supra; State of New Mexico v. Backer, supra; Oyler v. McKay, supra; Ogden River Waters Users' Association v. Weber Basin Water Conservancy, supra.

The judgment is

AFFIRMED.

APPENDIX B

PORTIONS OF SECTION 9 OF THE FEDERAL RESERVE ACT AS AMENDED:

12 U.S.C. 321

Any bank incorporated by special law of any State, or organized under the general law of any State or of the United States, including Morris Plan banks and other incorporated banking institutions engaged in similar business, desiring to become a member of the Federal reserve system, may make application to the Board of Governors of the Federal Reserve System, under such rules and regulations as it may prescribe, for the right to subscribe to the Federal reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. For the purposes of membership of any such bank the terms "capital" and "capital stock" shall include the amount of outstanding capital notes and debentures legally issued by the applying bank and purchased by the Reconstruction Finance Corporation. The Board of Governors of the Federal Reserve System, subject to the provisions of this title and to such conditions as it may prescribe pursuant thereto, may permit the applying bank to become a stockholder of such Federal reserve bank.

Upon the conversion of a national bank into a State bank, or the merger or consolidation of a national bank with a State bank which is not a member of the Federal Reserve System, the resulting or con-

tinuing State bank may be admitted to membership in the Federal Reserve System by the Board of Governors of the Federal Reserve System in accordance with the provisions of this section, but, otherwise, the Federal Reserve bank stock owned by the national bank shall be cancelled and paid for as provided in section 287 of this title. Upon the merger or consolidation of a national bank with a State member bank under a State charter, the membership of the State bank in the Federal Reserve System shall continue.

As amended Aug. 17, 1950, c. 729, § 8, 64 Stat. 458; July 15, 1952, c. 753, § 2(a), 66 Stat. 633.

* * * *

12 U.S.C. 323

Whenever the Board of Governors of the Federal Reserve System shall permit the applying bank to become a stockholder in the Federal Reserve Bank of the district its stock subscription shall be payable on call of the Board of Governors of the Federal Reserve System, and stock issued to it shall be held subject to the provisions of this Act.

Dec. 23, 1913, c. 6, § 9, 38, Stat. 259; June 21, 1917, c. 32, § 3, 40 Stat. 232; Aug. 23, 1935, c. 614, § 203 (a), 49 Stat. 704.

* * * *

12 U.S.C. 324

All banks admitted to membership under authority of this section shall be required to comply with the reserve and capital requirements of this Act and to conform to those provisions of law imposed on national banks which prohibit such banks from lending

on or purchasing their own stock, which relate to the withdrawal or impairment of their capital stock, and which relate to the payment of unearned dividends. Such banks and the officers, agents, and employees thereof shall also be subject to the provisions of and to the penalties prescribed by sections 334, 656, and 1005 of Title 18, United States Code, and shall be required to make reports of condition and of the payment of dividends to the Federal Reserve Bank of which they become a member. Not less than three of such reports shall be made annually on call of the Federal Reserve Bank on dates to be fixed by the Board of Governors of the Federal Reserve System. Failure to make such reports within ten days after the date they are called for shall subject the offending bank to a penalty of $100 a day for each day that it fails to transmit such report; such penalty to be collected by the Federal Reserve Bank by suit or otherwise. Such reports of condition shall be in such form and shall contain such information as the Board of Governors of the Federal Reserve System may require and shall be published by the reporting banks in such manner and in accordance with such regulations as the said Board may prescribe.

As amended Sept. 3, 1954, c. 1263, § 27, 68 Stat. 1236.

* * * *

12 U.S.C. 325

As a condition of membership such banks shall likewise be subject to examinations made by direction of the Board of Governors of the Federal Reserve System or of the Federal Reserve Bank by examiners

selected or approved by the Board of Governors of the Federal Reserve System.

Dec. 23, 1913, c. 6, § 9 (par.), as added June 21, 1917, c. 32, § 3, 40 Stat. 232; and amended Aug. 23, 1935, c. 614, § 203 (a), 49 Stat. 704.

* * * *

12 U.S.C. 327

If at any time it shall appear to the Board of Governors of the Federal Reserve System that a member bank has failed to comply with the provisions of this section or the regulations of the Board of Governors of the Federal Reserve System made pursuant thereto, or has ceased to exercise banking functions without a receiver or liquidating agent having been appointed therefor, it shall be within the power of the board after hearing to require such bank to surrender its stock in the Federal Reserve Bank and to forfeit all rights and privileges of membership. The Board of Governors of the Federal Reserve System may restore membership upon due proof of compliance with the conditions imposed by said sections.

Dec. 22, 1913, c. 6 § 9, 38 Stat. 259; June 21, 1917, c. 32 § 3, 40 Stat. 232; Apr. 23, 1930, c. 207, § 2, 46 Stat. 251; Aug. 23, 1935, c. 614, § 203(a), 49 Stat. 704.

* * * *

PORTION OF SECTION 11 OF THE FEDERAL RESERVE ACT AS AMENDED:

12 U.S.C. 248

The Board of Governors of the Federal Reserve System shall be authorized and empowered: . . .

(i) To require bonds of Federal Reserve agents, to make regulations for the safeguarding of all collateral bonds, Federal reserve notes, money or property of any kind deposited in the hands of such agents, and said board shall perform the duties, functions, or services specified in this Act and make all rules and regulations necessary to enable said board effectively to perform the same.

Dec. 23, 1913, c. 6, § § 11, 16, 38 Stat. 261, 262, 265; Sept. 7, 1916, c. 461, 39 Stat. 752; Sept. 26, 1918, c. 177, § 2, 40 Stat. 968; Feb. 27, 1921, c. 75, 41 Stat. 1146; June 26, 1930, c. 612, 46 Stat. 814; Mar. 9, 1933, c. 1, § 3, 48 Stat. 2; June 16, 1933, c. 89, § 7, 48 Stat. 167; Aug. 23, 1935, c. 614, § § 203 (a), 321 (a), 342, 49 Stat. 704, 713, 722.

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